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DATE: December 7, 2022

TO: Interested Parties

FROM: Paul Saucier, Director, Office of Aging and Disability Services

SUBJECT: PROPOSED RULE AMENDMENT: 14-197 Office of Aging and Disability Services Policy Manual, Chapter 5, Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism Spectrum Disorder in Maine

In January 2014, the federal Centers for Medicare and Medicaid Service (CMS) published new Medicaid requirements, in 42 C.F.R. § 441.301(c), regarding Section 1915(c) waiver Home and Community-Based Services (HCBS). The federal rule requires that people who receive HCBS funded through Medicaid must receive those services and supports in settings that meet specific standards. Though 14-197 C.M.R. ch. 5 (Chapter 5) is not a MaineCare rule, most or all of the persons protected by the rule receive MaineCare services – often in the form of HCBS waiver services. The Department adopted and CMS approved a State Transition Plan guiding Maine’s transition to compliance with the federal HCBS rule, and in that Plan the Department agreed to assure that Chapter 5 is not inconsistent with federal HCBS requirements because of its impact on some MaineCare HCBS waiver recipients. To come into compliance with this State Transition Plan, the Office of Aging and Disability Services is proposing to update Chapter 5 to acknowledge this rule’s interaction with 10-144 C.M.R. ch. 101 (MaineCare Benefits Manual), Ch. I, Section 6 – Global HCBS Waiver Person-Centered Planning and Settings Rule (Global HCBS Waiver Rule), which implements the new federal HCBS waiver requirements in MaineCare.

Specifically, the amended rule will clarify that when a Person experiencing Challenging Behavior receives MaineCare HCBS waiver services regulated, in part, under the Global HCBS Waiver Rule, the provision of supports authorized under this Chapter 5 shall comply with the Global HCBS Waiver Rule.

The Department plans to further amend Chapter 5 in 2023, with a comprehensive and stakeholder-informed update to the rule.

Rules and related rulemaking documents may be reviewed at, or printed from, the OADS website at <https://www.maine.gov/dhhs/oads/about-us/policy-planning> or for a fee, interested parties may request a paper copy of rules by calling (207) 287-7055 or Maine Relay number 711.

A concise summary of the proposed rule is provided in the Notice of Agency Rulemaking Proposal, which can be found at <http://www.maine.gov/sos/cec/rules/notices.html>. This notice also provides information regarding the rulemaking process. Please address all comments to the contact person provided below.

Enc: Notice of Agency Rulemaking Information

AGENCY: Department of Health and Human Services, Office of Aging and Disability Services

CHAPTER NUMBER AND TITLE: Title 14-197, Chapter 5
Regulations Governing Behavioral Support, Modification
and Management for People with Intellectual Disabilities or
Autism Spectrum Disorder in Maine

TYPE OF RULE (*check one*): ☒ Routine Technical ☐ Major Substantive

STATUTORY AUTHORITY FOR THIS RULE: 34-B M.R.S. 34-B M.R.S. §§ 5201(9), 5605

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

BRIEF SUMMARY: The purpose of this existing rule is to ensure that services provided to individuals experiencing Challenging Behavior are based on positive supports strategies and adhere to the commitment to end coercion and minimize unplanned, informal and inconsistent interventions. The proposed amendment will clarify that when a Person experiencing Challenging Behavior receives MaineCare HCBS waiver services regulated, in part, under the Global HCBS Waiver rule, the provision of supports authorized under this Chapter 5 shall comply with the Global HCBS Waiver Rule.

PUBLIC HEARING:

Due to the ongoing threat posed by COVID-19, DHHS has determined that its public hearings will be conducted remotely, via ZOOM. This is in accordance with the DHHS Remote Rulemakings Hearings Policy issued September 10, 2021. A virtual hearing via ZOOM will be held on December 29, 2022. To register, please use this link:

<https://mainestate.zoom.us/join/9tZwud-utpz4tG9M6eVtSou5TtC-ts23MmVN2>

After registering, you will receive a confirmation email containing information about joining the hearing. Interpreter services will be provided during the hearing upon request.

COMMENT DEADLINE: January 9, 2023, at 5:00 PM.

CONTACT PERSON FOR THIS FILING:

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CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT: N/A